

CAF CO.

IBLA 82-1172

Decided May 27, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer U-43464.

Affirmed.

1. Mineral Leasing Act: Generally -- Mineral Leasing Act: Combined Hydrocarbon Leases -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Lands Subject to -- Tar Sands: Generally

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

2. Mineral Leasing Act: Generally -- Mineral Leasing Act: Combined Hydrocarbon Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Competitive Leases -- Tar Sands: Generally

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant

to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

APPEARANCES: David L. Allin, Partner, CAF Co. for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE LEWIS

CAF Co. appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated June 8, 1982, rejecting its noncompetitive over-the-counter oil and gas lease offer U-43464 because the lands included in the offer are within the Tar Sand Triangle Designated Tar Sand Area, established September 23, 1980. <sup>1/</sup> Under the Combined Hydrocarbon Leasing Act of 1981 (CHLA), P.L. 97-78 (Nov. 16, 1981), lands within a designated tar sand area can be leased only by competitive bidding.

In its statement of reasons appellant asserts that its application process began on November 22, 1977, under another name; that the subject offer was filed on June 28, 1979; that it was aware that leasing in the potential tar sand areas of the Glen Canyon National Recreation Area (GCNRA) had been unofficially suspended pending completion of a final environmental statement and management plan; that this plan was published in July 1979 as FES 79-23 by the National Park Service; that in September 1981 it made inquiry to BLM regarding the status of the lease and was told that final rulemaking for leasing in GCNRA had not been published; and that BLM failed to act on the lease until issuance of a noncompetitive lease was precluded by CHLA.

Appellant contends that the Department of the Interior delayed leasing in the potential tar sand areas of GCNRA until legislation could be passed to allow rejection of its offer in a newly formed designated tar sand area. Appellant asserts that the motive for such action was to increase revenues. Due to BLM's delay in taking action on the lease, appellant requests that BLM grant an exception to CHLA and allow U-43464 to be "grandfathered" for conversion to a combined hydrocarbon lease.

In a supplemental statement submitted to the Board, appellant indicated it had applied to Minerals Management Service to have its lease (if issued) converted to a combined hydrocarbon lease and that it would be joining Gulf Oil Corporation and others in forming the proposed Tar Sand Triangle Unit area to coordinate development of tar sand resources.

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<sup>1/</sup> Establishment of the Tar Sand Triangle Designated Tar Sand Area as of Sept. 23, 1980, was recorded in the Federal Register on Nov. 20, 1980. (45 FR 76800-76801).

[1] The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. 30 U.S.C. § 226(a) (1976); Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); Dorothy Langley, 70 IBLA 324 (1983); Justheim Petroleum Co., 67 IBLA 38 (1982). The mere fact that appellant's oil and gas lease offer was pending at a time when the land was available for leasing does not invest the offeror with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the offer, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The offer to lease is a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, *supra*; McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, *supra* at 666; D. R. Gaither, 32 IBLA 106 (1977), *aff'd sub nom. Rowell v. Andrus*, Civ. No. 77-0106 (D. Utah Apr. 3, 1978), *aff'd in part and rev'd in part on other grounds*, 631 F.2d 699 (10th Cir. 1980).

Beyond the question of Secretarial discretion, ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Department of the Interior is to administer them in accordance with the dictates of the legislative branch. Since appellant's lease offer was still pending on the date CHLA took effect, and was nonconforming thereunder, it must be rejected. No oil and gas lease may issue to appellant for its oil and gas lease offer, because the lands requested are within a special tar sand area and are subject to leasing only through competitive bidding. F. C. Minkler, 71 IBLA 328 (1983); Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93, 89 I.D. 82 (1982).

[2] The fact that BLM delayed in acting on appellant's lease offer until after the effective date of CHLA does not entitle appellant to a lease. Dorothy Langley, *supra*. The failure of BLM to act on the subject oil and gas lease offer until after enactment of CHLA precludes BLM from lawfully issuing the lease thereafter. CHLA changed the status of the land within the special tar sand areas designated, and foreclosed their availability to the issuance of noncompetitive oil and gas leases as a matter of law. Dorothy Langley, *supra*; Larry E. Clark, 66 IBLA 23 (1982).

Appellant asserts that its offer was pending prior to the passage of the Act. Section 1(4) of CHLA states that "[t]he term 'combined hydrocarbon lease' shall refer to a lease issued in a special tar sand area pursuant to section 17 after the date of enactment of the Combined Hydrocarbon Leasing Act of 1981." 30 U.S.C. § 181 (Supp. V 1981). (Emphasis added.) The Act does not provide any deference for lease offers pending prior to the passage of the Act. Section 8 of CHLA also clearly implies that CHLA applies to all leases not outstanding on November 16, 1981. Since appellant had only a lease offer prior to the passage of CHLA, any lease issued to it after the date of passage must be in accordance with CHLA, and BLM properly rejected appellant's noncompetitive lease offer. Appellant's plans to join Gulf Oil Corporation and others in forming the proposed Tar Sand Triangle Unit area to coordinate the development of tar sand resources are to no avail. Appellant

had only a lease offer pending prior to the enactment of CHLA, and CHLA makes no provision for acceptance of a noncompetitive lease offer in a special tar sand lease area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

